IN THE

Supreme Court of the United States

OCTOBER TERM 1943

NO. 808

JACOB REICHERT,

Petitioner,

vs.

THE FEDERAL LAND BANK OF ST. PAUL,

Respondent.

PETITION AND BRIEF

For Writ of Certiorari to the United States Circuit Court of Appeals for the Eighth Circuit.

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(The brief in support of this petition begins at page 11.)

All emphasis in the petition and brief is supplied except where otherwise stated.

To the Honorable Harlan Fiske Stone, Chief Justice, and the Associate Justices of the Supreme Court of the United States:

Your petitioner respectfully shows:

I.

A Summary Statement of the Matter Involved.

The Statute.

The case arises out of Section 75 of the Bankruptcy Act, 11 U. S. C. 203, which relates to proceedings for the rehabilitation of farmer debtors. The portion of the statute involved is Section 75 (s)(2) and (3).

A government reprint of Section 75 is inserted following the brief herein.

The Issues.

The issues may be stated as follows:

1. Under the circumstances of this case, when the farmer debtor has exercised his right to redeem his farm under Section 75 (s)(3) by depositing the amount of the appraised value with the court and has also paid into court rental money under Section 75 (s)(2), shall such court rental money be applied on the appraised value or should it, after payment of taxes, be paid to the secured creditors in addition to the appraised value? We submit it should be applied on the appraised value. The rights of the creditors are fixed by the appraised value. That is all they are entitled to.

2. Shall the AAA payments from the United States Government to the farmer debtor for the year, not yet

paid to the farmer debtor at the time he exercises his right of redemption and deposits the appraised value, be paid to the secured creditors in addition to the appraised value? Again we submit that all the farmer debtor has to pay under the Act is the appraised value.

3. Shall unearned cash rental for land and buildings, not paid into court by the farmer debtor at the time of the exercise of his right of redemption by depositing the appraised value, be paid to the secured creditors in addition to the appraised value? Again we submit that when the creditors get the appraised value they have all they are entitled to.

The Decisions Below.

The opinion of the Circuit Court of Appeals for the Eighth Circuit below, dated January 5, 1944, is reported as *Reichert* v. *Federal Land Bank*, 139 Fed. (2d) 627. It appears at R. 32 to 40. The judgment of that court is at R. 41.

The opinion of the district court, which is not reported, is at R. 1 to 22.

A Statement of the Facts.

The petitioner is the farmer debtor and the respondent holds the first mortgage on the farmer debtor's land.

Under Section 75 (s) a stay and rental order was issued under Section 75 (s)(2) on August 28, 1941 (R. 3 to 5). This order also approved the appraisal of the farm of $4,560.00. The rental order was "for the year 1941 and annually thereafter for a period of three years." The order of rental was in three parts as follows:

1. One-fourth of grain and forage crops;
2. One-fourth of all AAA payments made to the farmer debtor by the United States;
3. $200 for the use of the buildings and pastures.

It will be noted that the rental order was entered at about the end of the previous crop year.

On October 11, 1941, which was 44 days after the rental order was entered, the farmer debtor paid into court the proceeds of his crops for the entire preceding crop year, amounting to $1,456.27 (R. 15, par. 4). Before November 8, 1941, that is less than 28 days later, he exercised his right of redemption by paying into court the $4,560 appraisal (R. 6). This exercise of the right of redemption was pursuant to Section 75 (s)(3) which provides that:

> "At the end of three years, **or prior thereto**, the debtor may pay into court the amount of the appraisal of the property * * *; *Provided*, That on request, the court shall cause a reappraisal * * * and the debtor shall then pay the value so arrived at into court * * * and thereupon the court shall, by an order, turn over full possession and title of said property, free and clear of all encumbrances to the debtor;" * * *

The conciliation commissioner fixed a reappraisal at the request of the respondent (R. 7). On petition for review by the respondent the judge increased the reappraisal to $10,400 (R. 7 to 8).

The three appraisals were as follows:

Original appraisal: $4,560 (R. 3).
Conciliation Commissioner's reappraisal: $8,000 (R. 7).
District Judge on Review: $10,400 (R. 8).

During this time, nearly a year, the court held the redemption money and also a new crop was produced.

The conciliation commissioner then entered his order reciting the original payment into court of $4,560 (R. 8, folio 9), and requiring the farmer debtor to pay in an additional sum of $5,840, to complete the total of $10,400, in accordance with the judge's order on review (R. 9, folio 10).

The respondent then filed another petition for review based on the ground that it, as secured creditor, was entitled to receive three additional sums, namely (1) the net proceeds out of the $1456.27 from the 1941 crops; (2) one-fourth of the AAA payments, received after redemption was exercised; and (3) $200 for the use of buildings and pastures which accrued after redemption (R. 13, par. 9).

The district judge on review ordered that the conciliation commissioner should (1) deduct taxes and upkeep from the $1,456.27 and pay the balance, plus (2) the 1941 AAA payments, plus (3) $200, to the respondent (R. 17, par. 2.) Order (R. 4). (Another portion of the order relating to a crop mortgage is not involved here.)

The Appellate Court sustained the District Court on these three points (R. 32 to 40). It found that the estate was insolvent, the first mortgage claim alone being $14,707.12, while the value of the land was only $10,400. It ordered that the net rental, and the AAA payment, and $200 cash should be paid and applied on the gross claim of $14,707.12, and not on the redemption valuation.

II.

Statement of the Basis of the Jurisdiction of this Court.

The jurisdiction of this court is conferred by Section 240 (a) of the Judicial Code; 28 U. S. C. 347 (a).

The petitioner has complied with Section 8 (a) of the Act of February 13, 1925; 28 U. S. C. 350. The final judgment of the court below was entered on January 5, 1944 (R. 41).

III.

The Questions Submitted.

The following questions are submitted:

1.

When, pursuant to Section 75 (s)(3), a farmer debtor at the outset of the first year of the three year stay period, but after he has paid to the court the net proceeds of his crop rent for the preceding year, exercises his right of redemption by paying into court the appraised value of his property, may the court pay the proceeds of such crop rent to the secured creditor instead of applying it on the price of redemption, the estate being insolvent, and the appraised value of the security being less than the amount of the first lien against it?

2.

When, pursuant to Section 75 (s)(3), a farmer debtor, at the outset of the three year stay period exercises his right to redeem his farm and thereafter a United States

AAA payment is paid to him, is any portion of such payment to be paid over to the secured creditor in addition to the appraised value?

3.

When, pursuant to Section 75 (s)(3), a farmer debtor at the outset of the first year of the three year stay period exercises his right to redeem his farm, shall cash rent for the use of buildings, and pastures for one full year, not yet earned or paid, be paid to the secured creditor in addition to the appraised value?

IV.

Reasons Relied Upon for the Allowance of a Writ of Certiorari.

1.

The decisions below involve a question of great importance in the interpretation and administration of an act of Congress, namely Section 75 of the Bankruptcy Act, 11 U. S. C. 203, relating to agriculture.

2.

The decisions by the courts below are judicial amendments to the statute which would thwart its purpose by defeating the efforts of a farmer debtor to redeem his farm at its value.

3.

The decisions by the courts below would unlawfully deprive the farmer debtor of the use of his money paid into court as redemption of his farm and at the same time charge him for the occupancy of his farm thereafter.

4.

If any part of the judgment below is grounded upon the assumption that in a farmer debtor proceeding the statutory direction that a portion of rental payment ordered by the court under Section 75 (s)(2) is to be paid to a secured creditor to take the place of interest such assumption is inapplicable to an insolvent estate where the value of the security is less than the first lien against it.

In re Ezell, District Court, Missouri, 1942, 47 Fed. Supp. 164.

First Savings Bank v. *Stuppi, In re Garcia,* C. C. A. 8, 1924, 2 Fed. (2d) 822, 823 (expressly affirming the District Court on this point while reversing it on another point).

Wilson v. *Dewey,* C. C. A. 8, 1943, 133 Fed. (2d) 962. Where the value of the security was in excess of the claim of the secured creditor.

Board of Commissioners v. *Hurley,* C. C. A. 8, 1909, 169 Fed. 92, 94.

Sexton v. *Dreyfus,* 1911, 219 U. S. 339. Unanimous opinion by Justice Holmes reversing the Circuit Court of Appeals and the District Court.

5.

The judgment of the Appellate Court which charged a farmer debtor in a proceeding under Section 75 (s) rental for a full year when he exercised his right of redemption at the outset is in conflict with the statute.

6.

There are conflicting opinions, resulting in confusion

and uncertainty, in the federal courts on the subject of the construction of Section 75 (s)(2) and (3) relating to the application of rental funds in relation to the claims of secured creditors.

In re Dewey, District Court, Missouri, not reported, reversed in *Wilson* v. *Dewey,* C. C. A. 8, 1943, 133 Fed. (2d) 962.

In re Ezell, District Court, Missouri, 1942, 45 Fed. Supp. 164.

In re Rider, District Court Iowa, 1941, 40 Fed. Supp. 882.

In re Thompson, District Court, Missouri, 1942, 48 Fed. Supp. 557. Reversed in *Farmers Bank* v. *Thompson,* C. C. A. 8, 1943, B. L. S. paragraph 54655.

In re Roney, District Court Indiana, not reported, reversed in *Federal Land Bank* v. *Roney,* C. C. A. 7, 1943, B. L. S. paragraph 54628.

Much of the conflict on the subject arises out of a disregard of the distinction between a solvent and an insolvent estate; or between a case where the secured creditor's claim is more and a case where it is less than the appraised value of the security.

7.

The judgment of the Appellate Court that required the farmer debtor to pay rental out of an AAA payment which had not been paid to him when he exercised his right of redemption under Section 75 (s)(3) is not in conformity with the terms of the rental order that he shall pay one-fourth of AAA payments made to him and it is also in conflict with the statute.

8.

The judgment of the Appellate Court which required the farmer debtor to pay a cash rental for a whole year of a stay under Section 75 (s)(2) when he exercised his right of redemption under Section 75 (s)(3) at the outset is not in conformity with the order of rental which required him to pay said cash rental for a full year's use of buildings and pastures and it is also in conflict with the statute.

Wherefore your petitioners pray that a writ of certiorari may issue to the Circuit Court of Appeals for the Seventh Circuit directing it to certify and send to this court a transcript of the record and proceedings thereon to the end that this cause may be received and determined by this Court and for all other relief as may be proper.

Respectfully submitted,

ELMER MCCLAIN,
Lima, Ohio;

WILLIAM LEMKE,
Washington, D. C.,
Counsel for Petitioners.

Lima, Ohio,
March 3, 1944.

BRIEF.

In Support of the Petition for a Writ of Certiorari.

The index precedes the Petition for Certiorari.

A Government print of Section 75 is inserted following this brief.

I.

The Report of the Decision Below.

The opinion of the Appellate Court below is reported as *Reichert* v. *Federal Land Bank,* 139 Fed. (2d) 627, and appears at R. 32 to 40. The judgment of that court is at R. 41.

The opinion of the District Court, which is not reported, is at R. 18-22.

II.

Grounds on Which the Jurisdiction of this Court is Invoked.

The basis of the jurisdiction of this court has been stated at page 6 of the preceding petition for certiorari.

III.

Statement of the Case.

After the farmer debtor proceeding had proceeded through Section 75 (a) to (r) for composition or extension

(R. 1) he filed his amended petition under Section 75 (s) and was adjudicated a farmer debtor bankrupt (R. 2 to 3).

Thereafter his farm was appraised at $4,560 (R. 3) and an order of possession, rental, and three year stay was entered (R. 3 to 5).

The rental order, which became the factual basis of this controversy, was in substance as follows:

It was entered on August 28, 1941 (R. 3), and was "for the year 1941 and annually thereafter for a period of three years."

It consisted of three parts:

1. The farmer debtor was to pay one-fourth of grain and forage crops raised and harvested each year.

2. He was also to pay one-fourth of all AAA payments made to him by the United States each year.

3. He was to pay $200 in cash each year for the use of the buildings and pastures.

This rental order of August 28, 1941, was entered at about the close of the preceding crop year.

About six weeks later, on October 11, 1941, he paid to the court as the proceeds of his crops for the preceding crop year, then harvested, the sum of $1,456.27 for the entire first year of the three year stay (R. 15, par. 4).

Some time before November 8, 1941, that is when less than 72 days of the first rental year had elased, he paid into court the full amount of the appraisal of his farm (R.

6), thus exercising his right of redemption as provided in Section 75 (s)(3), which in its pertinent part reads:

> "At the end of three years, or prior thereto, the debtor may pay into court the amount of the appraisal of the property * * *; *Provided,* That upon request * * * the court shall * * * after * * * hearing, fix the value of the property in accordance with the evidence submitted, and the debtor shall then pay the value so arrived at into court * * * and thereupon the court shall, by an order, turn over full possession and title of said property, free and clear of all encumbrances to the debtor:" * * *

Thereafter on the application of the secured creditor, the respondent here, the conciliation commissioner after a hearing named a reappraised value (R. 7). On the respondent's petition for review the judge of the bankruptcy court named a new valuation (R. 7 to 8).

The three valuations were as follows:

Original appraisal: $4,560 (R. 3).

Conciliation Commissioner's reappraisal: $8,000 (R. 7).

By the District Judge on Review: $10,400 (R. 8).

By the time the revaluation procedure came back to the conciliation commissioner after review by the judge another crop season had transpired and new crops had been produced on the farm. During that time the court held the money paid into court when the farmer debtor exercised his right of redemption.

In compliance with the order of the judge on review the conciliation commissioner ordered the payment of an additional $5,840 ($2,240 for one section of land and $3,600 for another, total $5,840) (R. 9, folio 10). The respondent then filed a second petition for review seeking to have

three additional sums paid to it as secured creditor, namely (1) what was left of the $1,456.27 crop proceeds after payment of taxes; (2) AAA payments received by the farmer debtors after the exercise of redemption; and (3) $200 for the use of buildings and pastures (R. 13, par. 9). (It also prayed for an additional sum under a crop mortgage which is not involved here.) The District Judge upheld these three claims of the respondent (R. 17, par. 2). Order (R. 4). The Appellate Court found that the estate was insolvent, as the respondent's first mortgage alone was $14,707.12, while the value of the farm was but $10,400. Nevertheless it held that the net crop rental, the AAA payment and the $200 cash rent should be paid in addition to the valuation price of $10,400.

The petitioner says that the secured creditor is not entitled to more than the value of its security, and is not entitled to the crop proceeds, the AAA payment or the $200 cash rental.

IV.

Specification of Errors.

1.

After the farmer debtor had exercised his right of redemption by paying into court the appraised value of his farm, all the creditor was entitled to was the value of the property, and the court could not require him to pay in addition thereto the moneys which accrued thereafter.

2.

After the farmer debtor had exercised his right of redemption by paying the appraised value of his farm into

court, the court could not place upon him further obligations.

3.

As the farmer debtor exercised his right of redemption at the very outset of the first year of his three year stay it was error to require him to pay over, in addition to the value of the security, moneys which were not then earned as rental.

4.

Nor could he lawfully be required to pay over, in addition to the value of the security, moneys which, by the terms of the rental order, were not payable when he exercised his right of redemption.

5.

It was error to hold that when the farmer debtor exercised his right of redemption by paying the value of his security into court, he was not as of that date entitled to have his farm turned over to him by the court free and clear of all encumbrances with no strings attached.

6.

It was error to hold that after the value of the security had been determined, the secured creditor was entitled to keep on applying to the old debt and its accretions any moneys received by it. Such receipts are to be applied to the valuation which is determined pursuant to the statute.

7.

When it was determined that the secured debt was greater than the value of the security, it was erroneous to permit moneys paid by the farmer debtor to be applied

in whole or in part to the debt instead of to the amount due as fixed by the valuation of the security.

8.

After the farmer debtor exercised his right of redemption by paying into court the value of the security, it was erroneous to require him to make additional payments during the time the secured creditor was seeking a higher valuation and more payments from him, meanwhile depriving him of the use of this money, or what is the same thing, causing him to pay interest on it without receiving any benefit.

9.

It was error to charge a full year's rental when the right of redemption was exercised because only a fraction of it had been earned.

10.

The decisions of the courts below are in error in requiring the farmer debtor to make payments not required by the rental order.

V.

Summary of the Argument.

When the farmer debtor exercised his right of redemption by paying into court the duly determined value of his farm pursuant to Section 75 (s)(3), the substantive proceeding was ended. All that remained to be done was to administer the case from then on for the purpose of winding it up. The mere seeking of a revaluation by the secured creditor did not operate to keep the rental order running. All that such request required was the redeter-

mination of value and the settlement of the case on that valuation in lieu of the original appraisal.

When a farmer debtor estate is insolvent and the valuation of the property is less than the debt secured by the first lien upon it, the valuation measures the debt to be paid. All moneys arising out of rental payments which go to the creditor are to be applied to the extinction of the debt as so measured.

VI.

ARGUMENT.

The Statutory Intent.

The intent and purpose of Section 75 (s) is to limit the obligations of a farmer debtor bankrupt to the value of his applicable security. At the very same time the act was passed, and in support of that intent and purpose, the preceding procedure under Section 75 (a) to (r) was modified, in two important respects, by amending Section 75 (k) and (n).

The Change in Section 75 (k).

Section 75 (k) was changed by reducing the basis of the settlement with creditors to the "**value of the property securing any such lien**". It was not previously so as Section 75 (k) originally required that any settlement under Section 75 (a) to (r) should "**not reduce the amount of nor impair the lien** of any secured creditor."

References:

The original Section 75 (k) is found in Public Document No. 420, 72nd Congress, HR 14359, approved March 3, 1933.

The present Section 75 (k), as amended upon the enactment of the present Section 75 (s), and also, the present Section 75 (s) are found together in Public Document No. 384, 74th Congress, S. 3002, approved August 28, 1935, also in 11 U. S. C. 203 (k).

The first duty of the bankruptcy court in the administration of Section 75 (s) is to "appraise all of the property of the debtor, wherever located, at its then fair and reasonable market value." Sections 75 (s), first, unnumbered, paragraph. This is the norm of the Act. All subsequent procedure rests upon this foundation.

In providing for redemption the Act reads:

> "At the end of three years, or prior thereto, the debtor may pay into court the amount of the appraisal of the property of which he retains possession, including the amount of encumbrances on his exemptions, up to the amount of the appraisal, less the amount paid on principal: *Provided,* That upon request of any secured or unsecured creditor, or upon request of the debtor, the court shall cause a reappraisal of the debtor's property, or in its discretion set a date for hearing, and after such hearing, fix the value of the property, in accordance with the evidence submitted, and the debtor shall then pay the value so arrived at into court, less payments made on the principal, for distribution to all secured and unsecured creditors, as their interests may appear, and thereupon the court shall, by an order, turn over full possession and title of said property, free and clear of encumbrances to the debtor." Section 75 (s)(3).

The Statutory Intent as Interpreted by this Court.

In a number of instances this court has grounded its interpretation of Section 75 (s) upon this basic purpose of the statute. The following examples are quoted

Wright v. *Union Central,* 1940, 311 U. S. 273, 278:

> "Safeguards were provided to protect the rights of secured creditors, throughout the proceedings, to the **extent of the value of the property.** *John Hancock Mutual Life Ins. Co.* v. *Bartels,* [308 U S. 180], at pp.

186-187; *Borchard* v. *California Bank*, [310 U. S. 311], at p. 317. **There is no constitutional claim of the creditor to more than that.** And so long as that right is protected the creditor certainly is in no position to insist that doubts or ambiguities in the Act be resolved in its favor and against the debtor. Rather, the Act must be liberally construed to give the debtor the full measure of the relief afforded by Congress (*John Hancock Mutual Life Ins. Co.* v. *Bartels* [308 U. S. 180]; *Kalb* v. *Feuerstein* [308 U. S. 433], lest its benefits be frittered away by narrow formalistic interpretations which disregard the spirit and the letter of the Act."

In that case of *Wright* v. *Union Central*, the lower courts found that the farmer debtor **had not paid rent as ordered** by the court. 108 Fed. (2d) 361. This court said at page 277 of the opinion:

> "We think that the denial of an opportunity for the debtor to redeem at the value fixed by the court before ordering a public sale was reversible error."

In the same case this court said of the statutory proviso that the right of redemption is conditioned upon the right of the secured creditor to have the land sold at public sale:

> "True, the granting of a request for a public sale is mandatory. But so is the granting of a request for a valuation at which the debtor may redeem. Yet a reconciliation of these seemingly inconsistent remedies is not difficult if the purpose and function of the Act are not obscured."

and held that the **right to redeem at the appraised value is paramount** to the right of a creditor to a public sale.

And at page 281, the opinion discussed the claim that the bankruptcy court had power to terminate the proceed-

ing for contumacious action by the former debtor or his inability to refinance himself and continued:

> "To hold that they empowered the court to deprive the debtor of his express and fundamental statutory **right to redeem at the reappraised value** or at the value fixed by the court would be to imply a power of forfeiture wholly incompatible with the broad design of the Act to aid and protect farmer debtors who were victims of the general economic depression. *Wright* v. *Vinton Branch,* 300 U. S. 440, page 466. Such an important remedial right cannot be lost by mere implication. And to hold that the court has the discretion to deny or to grant the debtor's **right to redeem at the reappraised value** or at the value fixed by the court, dependent on general equitable considerations, would be to rewrite the Act, so as to vest in the court a power which Congress did not plainly delegate."

Again at page 281 the opinion said that the value having been fixed

> . . . . "he was then entitled to have a reasonable time, fixed by the court, in which to **redeem at that value;** and that if he did so redeem, the land should be turned over to him free and clear of encumbrances and his discharge granted."

In *Borchard* v. *California Bank,* 1940, 310 U. S. 311, at page 317 it was said:

> "For more than thirty-one months after the petition for appraisal was filed no action was taken. An appraisal was thereafter made. No stay order has been entered fixing terms on which the debtors are to remain in possession. The petitioners were entitled to compliance with the procedure required by statute. The bank, at any time, could have obtained action by the Conciliation Commissioner and the court, in accordance with the statute. It cannot now

maintain that the disorderly and unauthorized procedure followed by the parties is the equivalent of that prescribed by the statute and that, as the petitioners have not been able to rehabilitate themselves, it is entitled to enforce its liens."

In discussing generally the provisions of Section 75 (s) in *John Hancock* v. *Bartels*, 308 U. S. 180, it was said concerning redemption at pages 186 and 187:

"Then it is provided, in paragraph (3), that at the end of the three year period, or at any time before that, the debtor may pay into court **the appraised value** of the property of which he retains possession, 'including the amount of encumbrances on his exemptions, up to the amount of the appraisal, less the amount paid on principal,' for appropriate distribution to his creditors. There is the proviso that upon the request of any creditor, or of the debtor, the court shall cause the debtor's property to be reappraised, or in its discretion set a date for hearing, and thereafter fix the value of the property in accordance with the evidence, and the debtor shall then pay the value so arrived at into court, less payments made on the principal, for distribution to his creditors. In that way, by the order of the court, the debtor may regain full possession and title of said property, the ascertained value of which has been devoted to the payment of his debts."

* * *

"The scheme of the statute is designed to provide an orderly procedure so as to give whatever relief may properly be afforded to the distressed farmer-debtor, while protecting the interests of his creditors by assuring the **fair application of whatever property the debtor** has to the payment of their claims, the priorities and liens of secured creditors being preserved. See *Wright* v. *Vinton Branch* (300 U. S. 440); *Adair* v. *Bank of America Association*, 303 U. S. 350, 354-357; *Wright*

v. *Union Central Life Insurance Co.*, 304 U. S. 502, 516, 517."

And in *Harris* v. *Zion*, 1943, 317 U. S. 447, at page 451, Mr. Justice Roberts, for the majority of the court, the minority not dissenting on this point, said:

"The section is a manifestation of the enlarged conception of the bankruptcy power as extending not alone to a seizure of an insolvent debtor's assets in the interest of an impartial application of them to his creditor's demands, but also as a means of relieving his distress and rehabilitating him financially while rendering his creditors all for which they may reasonably hope." Citing *Local Loan Co.* v. *Hunt*, 292 U. S. 234, 244; *Continental* v. *Chicago, etc. Ry. Co.*, 294 U. S. 648, 667, 675; *United States* v. *Bekins*, 304 U. S. 27, 47; *Wright* v. *Union Central*, 304 U. S. 502, 514; *Wright* v. *Union Central*, 311 U. S. 273, 279.

The Change in Section 75 (n).

In the same act that contained the present Section 75 (s) still another subsection of Section 75 (a) to (r) was significantly amended in a respect consonant with the provision that the value of the security instead of the amount of the debt should be the basis of redemption. Whereas Section 75 (n) originally provided that the rights of creditors should be determined as if an adjudication in bankruptcy had been entered upon the filing of the petition for composition or extension under Section 75 (a) to (r), with the further provision in the original Section 75 (k) that the lien should not be reduced in amount nor impaired, Section 75 (n) was amended in so far as it related to the present subject of the creditor's right, so as to read:

"**the rights and liabilities of creditors, and of all persons with respect to the property** of the farmer . . . **shall be the same as if** a voluntary petition for

adjudication had been filed and **a decree of adjudication had been entered on the day when the farmer's petition asking to be adjudged a bankrupt was filed.**''

. . .

In place of the last words quoted from the present Section 75 (n) the original Section 75 (n) read: "on the day when the farmer's petition or answer was filed," referring to the petition for composition or extension under Section 75 (a) to (r) because there was no Section 75 (s).

The Rules of Regular Bankruptcy in Part Made Applicable.

These changes, that is the one in Section 75 (k) making **the value of the security** the basis of redemption in place of the **amount of the secured debt,** and the one in Section 75 (n) changing the incidence of the rules of bankruptcy, revamped the Act to make it clear that mortgage creditors were subject, in Section 75, to some of the rules applicable in regular bankruptcy. It is significant that before Section 75 (s) can be invoked the farmer debtor must petition to be adjudicated a bankrupt—that is, his debts must exceed the value of his property. In practically every instance a farmer debtor's farm is over-encumbered. The Congress had in mind pretty exclusively farms mortgaged for more than they are worth.

The Interest Rule in General Bankruptcy.

Now in the history of bankruptcy beginning in English jurisprudence and continuing right on through our American jurisprudence, it has been the rule that if an estate is insolvent and a secured debt is greater than the value of the security, interest on the secured debt stops at the date of adjudication.

Mr. Justice Holmes, speaking for the whole court, in *Sexton* v. *Dreyfus,* 1911, 219 U. S. 339, traced the sub-

ject from the English bankruptcy law into our present Bankruptcy Act. The principle is stated in the headnote of the case in 55 L. ed. 244:

> "Secured creditors of a bankrupt, selling their security after the filing of the petition in bankruptcy, and finding the proceeds insufficient to pay the whole amount of their claims, are not entitled to apply such proceeds first to interest accrued since the filing of the petition, then to the principal debt, and then prove for the balance, although, by the bankrupt act of July 1, 1898, Section 67d, liens remain unaffected by that statute, and the value of securities is, by Section 57h, to be determined by converting them into money, 'according to the terms of the agreement.' "

In Rose's Notes it is put thus:

> "Since our bankruptcy system is taken from England, fundamental principles upon which it was administered were adopted, as construction of law goes with words when it is copied from another State and therefore interest on unsecured debt stops at date of filing of petition."
>
> "Under Bankruptcy Act, Section 57h, secured Creditor must have security valued at date of filing petition, and upon selling security after filing of petition cannot first apply proceeds to interest accruing after date of filing of petition."

This principle was recognized by the Eighth Circuit, from which the present *Reichert* case comes for certiorari, in *Codar* v. *Arts*, 1907, 152 Fed. 943, 950 (which was before this court decided *Sexton* v. *Dreyfus*, 1911, 219 U. S. 339).

A solvent estate was before the court and it held that interest accruing after adjudication might be collected in regular bankruptcy by a secured creditor but observed that

> "another rule might prevail if the proceeds of the

mortgaged property were insufficient to pay the mortgaged debt and its interest in full."

In affirming the Eighth Circuit's decision this court said in *Codar* v. *Arts*, 1909, 213 U. S. 207, 245:

"Nor do we think the Circuit Court of Appeals erred in holding that **inasmuch as the estate was ample for that purpose,** Arts was entitled to interest on his mortgage debt."

The Eighth Circuit followed the rule in *Board of Commissioners* v. *Hurley*, 1908, 169 Fed. 92 at page 94.

The Eighth Circuit again recognized the rule long after *Codar* v. *Arts* and after *Sexton* v. *Dreyfus*. In the case of *First Savings Bank* v. *Stuppi*, also entitled *In re Garcia*, C. C. A. 8, 1924, 2 Fed. (2d) 822, the referee allowed interest on a mortgage claim after bankruptcy. At page 823 of the opinion of the Appellate Court it was recited that the District Court "overruled the referee in so far as he had allowed interest from the filing of the petition in bankruptcy." The Appellate Court sustained the District Court on this point. On other points it modified the order of the District Court.

The Rule Has Been Followed In Farmer Debtor Cases.

In re Ezell, 1942, 45 Fed. Supp. 164. In that case there was but one creditor which held a mortgage debt larger than the value of the mortgaged farm. At the end of the three year stay there was a revaluation which the farmer debtor paid into court whereupon the farm was turned over to him clear of all encumbrances. At the time of the exercise of the right of redemption rental moneys remained in the court which the secured creditor claimed in addition to the redemption money.

The court said:

"The debtor contends that the payment of the full reappraised value of the farm to the creditor is all that the statute requires him to do in order to obtain full title to the property. The creditor contends that the rentals paid to the conciliation commissioner and not disbursed by the commissioner were not payments upon the principal of the obligation and should be paid over to the creditor.

The question presented is a novel one in so far as the court has been able to ascertain. Counsel's industry has not resulted in the disclosure of any adjudicated case determining the disputed question. The Act is not at all clear, hence **resort to the application of general principles must be had** to some extent in determining the question presented."

[Quoting from Section 75 (s)(2) and (3) which relate to rental and to redemption:]

"It is clear that the Act contemplates the distribution of any balance of rental monies paid to the conciliation commissioner remaining after the payment of taxes and other operating expenses, to the creditors. In this case there is only one creditor, hence, for present purposes the Act required the payment by the commissioner of the balance to the claimant, John Hancock Mutual Life Insurance Company. The Act apparently does not require the annual distribution to creditors of any balance then on hand. But if the balance of the rental money now remaining had been distributed by the conciliation commissioner it would obviously have been paid to this creditor. The Act requires the deduction from the appraised value of any payment on the principal in determining the amount which the debtor is required by the Act to pay the creditors in order to obtain title at the end of the moratorium period. It will somewhat simplify the analysis of the question if we treat the balance of the rental money as having been disposed of as directed

by the Act and assume that it has been paid to the creditor. Indulging that assumption, the question immediately arises as to whether such a payment was a payment on the principal which would reduce the amount necessary to be paid by the debtor to a sum equal to the reappraised value of $6,000 less the amount of the assumed payment, or whether, as the creditor claims, this assumed payment should not be treated as a payment on the principal but should be considered as a payment by the debtor for the use of the premises which he retained but which the creditor would, absent the effect of the statute, have been entitled to.

Under the general law of bankruptcy, the court retains all of the income from the bankrupt estate during the period of administration for distribution to the creditors. Income from pledged assets ordinarily is applied to the payment of the obligation which the pledge was made to secure, but not exceeding the total amount authorized by law. In this instance the total amount of the obligation secured was not only the principal amount of the mortgage note but also the interest accrued thereon at the time of the adjudication in bankruptcy. Hence, the principal of the debtor's obligation to this creditor must be treated as the total of the note and the interest due thereon at the time of the adjudication. **Generally, no interest may be recovered after the date of adjudication. But that is not true where the bankrupt estate is solvent and the obligation including interest may be paid in full. This estate is not solvent, hence the balance of the rental money on hand may not be paid to the creditor upon the theory that it represents interest on the principal obligation accruing subsequent to the adjudication in bankruptcy.** If, therefore, the payment had been made of the funds now in dispute to the creditors before the reappraisal of the property at the end of the moratorium period, those payments would necessarily have to be payments upon the principal obligation, to-wit,

the amount of the principal and interest due at the date of adjudication. **The statute requires that any amount paid upon the principal must be deducted from the appraised value of the property in determining the amount which the debtor must pay for the discharge of his debt and the statute specifically provides that the payment of the amount so arrived at shall be the extent of the payment necessary in order to authorize the transfer of the unencumbered title to the debtor.** Since the payment of the unexpended balance was not made to the creditor the full amount of the reappraised value of the property was paid by the debtor. **The creditor has, therefore, received all that it may, under the statute, demand as a prerequisite to the transfer of the unencumbered title to the debtor.** The unexpended funds should, therefore, be returned to the farm-debtor."

In re Thompson, 1942, 48 Fed. Supp. 557. There the farmer debtor at the end of the three year stay paid the appraised valuation into court and his farm was turned over to him as required by statute. The court then held rental money from the mortgaged farm which had not been paid to the secured creditor and the unsecured creditors claimed it. The court said:

"In regard to the disposition of money collected by the conciliation commissioner as rental, the Act provides:

'Such rental shall be paid into court, to be used, first, for payment of taxes and upkeep of the property, and the remainder to be distributed among the secured and unsecured cerditors, and applied on their claims, as their interest may appear.' [Section 75 (s)(2).]

The secured creditors are making no claim to the rental money, hence they may be eliminated from consideration.

Obviously, the Act contemplates that any balance of rentals or net rentals are to be applied to the

debtor-bankrupt's obligations. He contends that the Act requires that the application be first made on the secured debts, thereby compelling a reduction of the principal of those obligations, and that it does not permit the commissioner to pay anything to unsecured creditors until the secured debts are satisfied. The obvious result of such a construction of the Act would be that all of the debtor's debts both secured and unsecured would be discharged and all his mortgaged assets recovered upon the payment to the secured creditors, either from rentals or otherwise, of the reappraised value of the mortgaged property. The debtor contends that result was the intent of the Act."

. . .

"Several general principles should be kept in mind in determining the proper construction of the Act. First, it has been determined that the Act requires the debtor to turn over all of his property to the Court and, excepting proper exemptions, permit all to be applied to the payment of his debts.

'As stated by the Senate Judiciary Committee in reporting these amendments: ". . . subsection (n) brings all of the bankrupt's property, wherever located, under the absolute jurisdiction of the bankruptcy court, where it ought to be. Any farmer who takes advantage of this act ought to be willing to surrender all his property to the jurisdiction of the court, for the purpose of paying his debts, and for the sake of uniformity." ' *Kalb* v. *Feuerstein*, 308 U. S. 433, 442.

The record demonstrates that the debtor has done that. There is no suggestion that his schedules were fraudulent nor has there been any request for discovery of concealed assets.

Second, the priorities of liens and claims must be preserved:

'The scheme of the statute is designed to provide an orderly procedure so as to give whatever relief may properly be afforded to the distressed farmer-

debtor, while protecting the interests of his creditors by assuring the fair application of whatever property the debtor has to the payment of their claims, *the priorities and liens of secured creditors being preserved.'* (Italics supplied.) *John Hancock Mutual Life Insurance Company* v. *Bartels,* 308 U. S. 180.

This was not done. For the net rentals were not applied first to secured debtors. In that particular neither the rule last quoted nor the requirement of the Act that net rentals should be paid to creditors 'as their interests may appear,' was followed since the claims of the secured creditors were obviously superior. In addition to this statutory requirement and the quoted expression of the Supreme Court, another equitable principle that income from the security should be devoted to the discharge of the secured debt before it is applied on another obligation should be recognized. The rentals, in this instance, were from the secured creditors' security.

But the question arises—if the foregoing interpretation of the first sentence of paragraph (2) of subsection (s) of the Act which relates to the distribution of rentals is correct, why did Congress provide further in the same paragraph for the payment of net rentals on the principal of unsecured debts by the use of the following language:

'The court, in its discretion, if it deems it necessary to protect the creditors from loss by the estate . . . may, in addition to the rental, require payments on the principal due and owing by the debtor to the secured or unsecured creditors, as their interests may appear, in accordance with the provisions of this title, and may require such payments to be made quarterly, semi-annually, or annually, not inconsistent with the protection of the rights of the creditors, and the debtor's ability to pay, with a view to his financial rehabilitation.' [Section 75 (s)(2).]

The answer is reasonably clear that the statute contemplated the possibility that some instances would arise where there were no secured debts or where the secured debts were comparatively small, in which event there might be an extinguishment of those obligations with assets remaining for distribution to unsecured creditors. The fact that experience has encountered few, if any, such cases does not militate against an interpretation which gives to the statute a broadly inclusive scope sufficient to include them.

Assuming, however, that the net rentals should have been applied to the principal of the secured debts, yet in this instance they were not and the debtor, with other funds discharged the lien of the preferred creditors. Should not the remaining assets be used to discharge the claims of those who are demanding their payment? Certainly if the debtor has the money he must pay these debts. *Kalb* v. *Feuerstein, supra.* But it is perfectly clear that the debtor had no funds or assets other than those surrendered to the conciliation commissioner and that the $7,296.67 which he paid into court to secure the release of the mortgaged property was borrowed for that purpose with the possible exception of a small amount earned from the use of the mortgaged premises during the three year period following adjudication in bankruptcy. It is likewise clear that the payment of the full appraised value of the mortgaged property into court was under compulsion of the commissioner's order that he do so.

There is no rule of bankruptcy law which authorizes a bankruptcy court to require a bankrupt to borrow money to pay his debts as a condition precedent to receiving the benefits of bankruptcy. All that may be required is that he surrender all of his assets to the court for that purpose.

As noted, there is a possibility that a small amount of the $7,296.67 consisted of money earned by the debtor from the use of the mortgaged premises dur-

ing the moratorium period. It is unnecessary to determine that fact since money so earned would not under this Act be assets belonging to the estate. In the ordinary bankruptcy proceedings the earnings from assets belonging to the estate become assets subject to administration. But under this Act the fixed rentals take the place of the earnings which the mortgaged property might have made if operated by the court during bankruptcy and hence constitute all that may be claimed by the debtor.

There is no alternative other than the conclusion that the net rentals should have been applied on the principal of the secured debts and that the debtor should have been required to pay into court only the difference between the net rentals less cost of administration and the appraised value of the mortgaged property. The fact that the secured creditors will lose part and the unsecured creditors all of their claims, while unfortunate, is a well-known incident to bankruptcy."

The Present Case.

1.

The Estate Is Insolvent.

The estate is insolvent. The farm is not worth the first mortgages. This is true even at the high valuation put on it by the district judge of $10,400 (R. 7, folio 8, at middle of R. 8).

There are two sections of land:

Section 29, First mortgage $6918.30; second mortgage $4566.50. Total of mortgages on Section 29, $11,484.80 (R. 14). Section 1. Valuation by the Judge, $4,000 (R. 8, middle of page). Excess of mortgages on Section 29 over security $7,484.80.

Section 28, First mortgage $7,788.82; second mortgage $5,215.08. Total first and second mortgages $13,003.90 (R. 19 and 15, Section 1). Valuation by the judge, $6,400 (R. 8, middle of page). Excess of mortgages on Section 28 over security $6603.90.

Putting it another way:

	Valuation	First Mortgage	Second Mortgage	Total First and Second Mortgages.
Section 29	$ 4000.00	$ 6918.30	$ 4566.50	$11,484.80
Section 28	6400.00	7788.82	5215.08	13,003.90
Totals	$10400.00	$14707.12	$ 9781.50	$24,488.70

The first mortgage on each section overtopped the value of the security and the total of the two first mortgages exceeded the value of the two sections by $4,307.12. The first and second mortgages exceeded the total value of the land by $14,088.70.

2.

The Rent Order Applied to the Facts. The $1456.27 Crop Proceeds.

When the rental order at R. 4, top of page, under Section 75 (s)(2) was entered on August 28, 1941, the crop season was virtually ended in North Dakota. Consequently within six weeks, that is on October 11, 1941, the past season's crop proceeds of $1,456.27 had been paid into court (R. 15, par. 4). Less than four weeks later, that is, prior to November 8, 1941, the farmer debtor had exercised his right of redemption under Section 75 (s)(3) by paying the appraised value into court (R. 6, folio 6). In other words the $1,456.27 crop proceeds concerning one full year of 52 weeks were paid into court for six weeks or 42 days use of the land. No farm crop can be raised in 42 days.

It can not be said that the rental provision of Section 75 (s)(2) calling for:

> "A reasonable rental . . . the amount and kind of such rental to be the usual customary rental in the community where the property is located, based upon the rental value, net income and earning capacity of the property."

can keep as rental for six weeks the entire year's crop proceeds. The tenancy had then lasted but one and a half months and only two and a half months of the tenancy had elapsed on November 8, 1941, when the right of redemption was exercised. Such a claim would demand for the rent of a dwelling twelve months rent for two and a half months of tenancy.

Therefore, even by the lower courts' judgments that rentals are not to be applied on the valuation but upon the gross debt regardless of valuation, the total year's income of $1,456.27 can not be so applied for one-fifth of a year of tenancy.

The AAA Payments.

By the second component of the rental order at R. 4, top of page:

> "one-fourth of all payments **made to the bankrupt** under the AAA program of the U. S."

were to be part of the rental. There is no evidence or claim that any AAA payment was made to the bankrupt, at the exercise of the right of redemption. Therefore, no AAA money can be claimed due to the court.

The $200 for Use of Buildings and Pastures.

The third component of the rental order was $200 for buildings and pastures (R. 4, top of page). Exactly like

the crop rental, the total $200 was for an entire year's occupancy of buildings and use of pastures. There is no evidence of this sum being paid. Rent is not due until it is earned. For two and a half months of tenancy, a full year's rental was not earned because but one-fifth of the year had expired.

3.

The Law Applied to this Case.
First Question.

The first question is whether the statute permits rental to be charged against a farmer debtor after he exercises his right of redemption. Does the rental stop running when the amount of the appraisal is paid into court? It seems clear that it does. By every intendment of the statute the valuation of the applicable property of the bankrupt is the measure of the creditors' right to the estate. They are protected "to the extent of the value of the property. There is no constitutional claim of the creditor to more than that." Doubts and ambiguities can not be resolved against the debtor. "Rather the Act must be liberally construed to give the debtor the full measure of the relief afforded by Congress." *Wright* v. *Union Central*, 1940, 311 U. S. 273, 278.

Congress, showed the intent of the act, coincident with its enactment, (1) by clearing away the old Section 75 (k) which would not permit the value of the security to measure the amount of the redemption money but insisted on the full pound of flesh; the amended Section 75 (k) rested the whole Act upon the **value of the security** as distinguished from the **amount of the debt** or its ancillary incidents such as interest. (2) Then it made the regular bankruptcy rule of "no interest to a secured creditor of an insolvent estate" apply to redemption by changing Section 75 (n) to

make creditor's rights date from the adjudication as in regular bankruptcy—not from the redemption.

The intent is clear. When the right of redemption is exercised the bankruptcy case is over; all that remains is to close the case. The creditor may request a revaluation but that is simply a matter of finding the amount due. He may not start the running of rental again, thus freeing him from risk, win or lose. He may have a new enquiry into value, but he may not thereby stifle the exercise of the right of redemption already accomplished.

On this phase of the case the judgments below are contrary to the statute.

The Second Question.

The **second question** is whether excess rental above taxes and upkeep shall be applied on the gross amount of the secured creditor's debt or on the valuation of the security. The holding that such excess does not apply to reduce the valuation as the redemption price hangs for support by two very slender threads.

One support is the word "principal" in that part of Section 75 (s)(2) which reads:

> "The court may in its discretion . . . **require payments on the principal**".

This emphasis on the word "principal" seems to obscure the overpowering purpose of the act to put the **value** of the security in place of the **security** itself. It overlooks the preliminary sweeping away of the interference of old Section 75 (k) and (n) in the very act that promulgated Section 75 (s). There must be an end to all things. Under the bankruptcy power of the Constitution, Congress saw fit to place a creditor's claim against a farmer debtor bankrupt under Section 75 on a definite basis—the **value** of the

security. It left the **security** itself in the possession of the farmer debtor so that by his earnings and by his credit he could settle on the basis of **value,** not on an ever increasing debt—like the never-ending variable limit in mathematics. This definite sum is the value . nd it is the principal to be paid to redeem the security. The purpose of the rental is to get the farmer debtor out—not to get him in further.

The second support of the argument that net rental must be applied on the gross amount of the claim of the creditor, instead of on the value of the security, is that the rental in Section 75 (s) (2) is by analogy interest on the debt and therefore since interest grows out of the debt the rental must not be applied on the value but on the debt as it existed before valuation of the security. This conclusion is untenable. By the very analogy invoked, the conclusion must be the opposite because in bankruptcy interest does not continue to accrue on unsecured debts at all, and on secured debts never unless there is ample security value to overtop the debt.

There is nothing sacred about a secured debt. It is

> "a no more king of property than an unsecured debt and the Constitution expressly permits and grants to Congress the power to affect such property whether it be an unsecured debt or whether it be a lien, by laws relating to the subject of bankruptcies."
>
> *Campbell* v. *Alleghany,* 1935, 79 Fed. (2d) 547.
> *Bradford* v. *Fahey,* 1935, 76 Fed. (2d) 628, 631.
> *In re Burgh,* 1933, 7 Fed. Supp. 184, 185.
> *In re Jones,* 1935, 10 Fed. Supp. 165, 167;
> *In re Jordan,* 1873, 13 Fed. Cases 1079.

There is no substance to the argument that either because of the word "principal" in Section 75 (s)(2) or be-

cause of the analogy of regular bankruptcy the net rent goes to the obsolete claim which has been supplanted by the value of the security. Section 75 from start to finish is a remedial statute and furthermore rests upon the bankruptcy power of the Constitution.

The holdings of the lower courts warp the statute.

The Third Question.

The third question in the present case is whether the rental payments for an entire year could be taken when but two and a half months—or one-fifth of the year—of tenancy under the court had expired when the right of redemption was exercised on November 8, 1941. R. 6.

There is no more reason for taking twelve months rent for two and a half months of tenancy than there would be for requiring the whole three years rental to be paid. The fundamental law of rent is that it is not due until it is earned. The bankruptcy court had no power to reach back nine and a half months to the beginning of the agricultural year, starting in 1940, and require rental up to the entry of the rental order on August 28, 1941. But it did just that by taking the entire $1,456.27 merely because the denouement of the whole agricultural activities happened to fall shortly after the order was entered. The same reasoning applies to the $200 to be paid for one full year for use of buildings and pastures. As to the AAA payment, none was paid to the farmer debtor and by the words of the order it was payable out of "payments made to the bankrupt." As no payment had been paid when the right of redemption was exercised, none was due as rent.

On this ground also the reasoning of the courts below falls.

It would seem that the decisions below call for the exercise of the supervision of this court. They conflict with the statute. They conflict with the decisions of other courts. They conflict with previous decisions of the same circuit.

Wherefore your petitioners pray this court to issue a writ of certiorari to the Appellate Court.

Respectfully submitted,

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Lima, Ohio,
March 8, 1944.

AGRICULTURAL COMPOSITIONS AND EXTENSIONS

[PUBLIC—No. 420—72D CONGRESS]

[H. R. 14359]

AN ACT

To amend an Act entitled "An Act to establish a uniform system of bankruptcy throughout the United States," approved July 1, 1898, and Acts amendatory thereof and supplementary thereto.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Act of July 1, 1898, entitled "An Act to establish a uniform system of bankruptcy throughout the United States," as amended by the Acts of February 5, 1903, June 15, 1906, June 25, 1910, March 2, 1917, January 7, 1922, May 27, 1926, and February 11, 1932, be, and it is hereby, amended by adding thereto a new chapter to read as follows:

"CHAPTER VIII

[As amended by the 73rd, 74th, 75th, and 76th Congresses]

"PROVISIONS FOR THE RELIEF OF DEBTORS

"SEC. 75. AGRICULTURAL COMPOSITIONS AND EXTENSIONS.—(a) Within thirty days after June 7, 1934, every court of bankruptcy of which the jurisdiction or territory includes a county or counties having an agricultural population (according to the last available United States census) of five hundred or more farmers shall appoint one or more referees to be known as 'conciliation commissioners', one such conciliation commissioner to be appointed for each county having an agricultural population of five hundred or more farmers according to said census: *Provided further*, That where any county in any such district contains a smaller number of farmers according to said census, for the purposes of this paragraph such county shall be included with one or more adjacent counties where the population of the counties so combined includes five hundred or more farmers, according to said census. In case more than one conciliation commissioner is appointed for a county, each commissioner shall act separately and shall have such territorial jurisdiction within the county as the court shall specify. A conciliation commissioner shall have a term of office for one year and may be removed by the court if his services are no longer needed or for other cause. No individual shall be eligible to appointment as a conciliation commissioner unless he is eligible for appointment as a referee [1] and in addition is a resident

[1] Sec. 35 of Chandler Act, Public, 696, of the 75th Cong., requires all new referees to be attorneys.

of the county, familiar with agricultural conditions therein and not engaged in the farm-mortgage business, the business of financing farmers or transactions in agricultural commodities or the business of marketing or dealing in agricultural commodities or of furnishing agricultural supplies. In each judicial district the court may, if it finds it necessary or desirable, appoint a suitable person as a supervising conciliation commissioner. The supervising conciliation commissioner shall have such supervisory functions under this section as the court may by order specify.

"(b) Upon filing of any petition by a farmer under this section there shall be paid a fee of $10 to be transmitted to the clerk of the court and covered into the Treasury. The conciliation commissioner shall receive as compensation for his services, a fee of $25 for each case submitted to him, ~~and when docketed, to be paid out of the Treasury~~ *to be paid out of the Treasury when the conciliation commissioner completes the duties assigned to him by the court.* A supervising conciliation commissioner shall receive, as compensation for his services, a per diem allowance to be fixed by the court, in an amount not in excess of $5 per day, together with subsistence and travel expenses in accordance with the law applicable to officers of the Department of Justice. Such compensation and expenses shall be paid out of the Treasury. If the creditors at any time desire supervision over the farming operations of a farmer, the cost of such supervision shall be borne by such creditors or by the farmer, as may be agreed upon by them, but in no instance shall the farmer be required to pay more than one-half of the cost of such supervision. Nothing contained in this section shall prevent a conciliation commissioner who supervises such farming operations from receiving such compensation therefor as may be so agreed upon. No fees, costs, or other charges shall be charged or taxed to any farmer or his creditors by any conciliation commissioner or with respect to any proceeding under this section, except as hereinbefore in this section provided. The conciliation commissioner may accept and avail himself of office space, equipment, and assistance furnished him by other Federal officials, or by any State, county, or other public officials. The Supreme Court is authorized to make such general orders as it may find necessary properly to govern the administration of the office of conciliation commissioner and proceedings under this section; but any district court of the United States may, for good cause shown and in the interests of justice, permit any such general order to be waived.

"(c) At any time ~~within 5 years after March 3, 1933,~~ *prior to March 4, 1944,* a petition may be filed by any farmer, stating that the farmer is insolvent or unable to meet his debts as they mature, and that it is desirable to effect a composition or an extension of time to pay his debts. The petition or answer of the farmer shall be accompanied by his schedules. The petition and answer shall be filed with the court, but shall, on request of the farmer or creditor, be received by the conciliation commissioner for the county in which the farmer resides and promptly transmitted by him to the clerk of the court for filing. If any such petition is filed, an order of adjudication shall not be entered except as provided hereinafter in this section.

"(d) After the filing of such petition or answer by the farmer, the farmer shall, within such time and in such form as the rules provide, file an inventory of his estate.

"(e) The conciliation commissioner shall promptly call the first meeting of creditors, stating in the notice that the farmer proposes to offer terms of composition or extension, and inclosing with the notice a summary of the inventory, a brief statement of the farmer's indebtedness as shown by the schedules, and a list of the names and addresses of the secured creditors and unsecured creditors, with the amounts owing to each as shown by the schedules. At the first meeting of the creditors the farmer may be examined, and the creditors may appoint a committee to submit to the conciliation commissioner a supplementary inventory of the farmer's estate. The conciliation commissioner shall, after hearing the parties in interest, fix a reasonable time within which application for confirmation shall be made, and may later extend such time for cause shown. After the filing of the petition and prior to the confirmation or other disposition of the composition or extension proposal by the court, the court shall exercise such control over the property of the farmer as the court deems in the best interests of the farmer and his creditors.

"(f) There shall be prepared by, or under the supervision of, the conciliation commissioner a final inventory of the farmer's estate, and in the preparation of such inventory the commissioner shall give due consideration to the inventory filed by the farmer and to any supplementary inventory filed by a committee of the creditors.

"(g) An application for the confirmation of a composition or extension proposal may be filed in the court of bankruptcy after, but not before, it has been accepted in writing, by a majority in number of all creditors whose claims have been allowed, including secured creditors whose claims are affected, which number shall represent a majority in amount of such claims.

"(h) A date and place, with reference to the convenience of the parties in interest, shall be fixed for a hearing upon each application for the confirmation of the composition or extension proposal and upon such objections as may be made to its confirmation.

"(i) The court shall confirm the proposal if satisfied that (1) it includes an equitable and feasible method of liquidation for secured creditors and of financial rehabilitation for the farmer; (2) it is for the best interests of all creditors; and (3) the offer and its acceptance are in good faith, and have not been made or procured except as herein provided, or by any means, promises, or acts herein forbidden. In applications for extensions the court shall require proof from each creditor filing a claim that such claim is free from usury as defined by the laws of the place where the debt is contracted.

"(j) The terms of a composition or extension proposal may extend the time of payment of either secured or unsecured debts, or both, and may provide for priority of payments to be made during the period of extension as between secured and unsecured creditors. It may also include specific undertakings by the farmer during the period of the extension, including provisions for payments on account, and may provide for supervisory or other control by the conciliation commissioner over the farmer's affairs during such period, and for the termination of such period of supervision or control under conditions specified: *Provided*, That the provisions of this section shall not affect the allowances and exemptions to debtors as are provided for bankrupts under title 11, chapter 3, section 24,

of the United States Code, and such allowances and exemptions shall be set aside for the use of the debtor in the manner provided for bankrupts.

"(k) Upon its confirmation, a composition or extension proposal shall be binding upon the farmer and his secured and unsecured creditors affected thereby: *Provided, however,* That such extension and/or composition shall not reduce the amount of or impair the lien of any secured creditor below the fair and reasonable market value of the property securing any such lien at the time that the extension and/or composition is accepted, but nothing herein shall prevent the reduction of the future rate of interest on all debts of the debtor, whether secured or unsecured.

"(l) Upon the confirmation of a composition the consideration shall be distributed under the supervision of the conciliation commissioner as the court shall direct, and the case dismissed: *Provided,* That the debts having priority of payment under title 11, chapter 7, section 104, of the United States Code, for bankrupt estates, shall have priority of payment in the same order as set forth in said section 104 under the provisions of this section in any distribution, assignment, composition, or settlement herein provided for. Upon the confirmation of an extension proposal the court may dismiss the proceeding or retain jurisdiction of the farmer and his property during the period of the extension in order to protect and preserve the estate and enforce through the conciliation commissioner the terms of the extension proposal. The court may, after hearing and for good cause shown, at any time during the period covered by an extension proposal that has been confirmed by the court, set the same aside, reinstate the case, and modify the terms of the extension proposal.

"(m) The judge may, upon the application of any party in interest, file at any time within six months after the composition or extension proposal has been confirmed, set the same aside and reinstate the case, if it shall be made to appear upon a trial that fraud was practiced in the procuring of such composition or extension, and that knowledge thereof has come to the petitioners since the confirmation thereof.

"(n) The filing of a petition or answer with the clerk of court, or leaving it with the conciliation commissioner for the purpose of forwarding same to the clerk of court, praying for relief under section 75 of this Act, as amended, shall immediately subject the farmer and all his property, wherever located, for all the purposes of this section, to the exclusive jurisdiction of the court, including all real or personal property, or any equity or right in any such property, including, among others, contracts for purchase, contracts for deed, or conditional sales contracts, the right or the equity of redemption where the period of redemption has not or had not expired, or where a deed of trust has been given as security, or where the sale has not or had not been confirmed, or where deed had not been delivered, at the time of filing the petition.

"In all cases where, at the time of filing the petition, the period of redemption has not or had not expired, or where the right under a deed of trust has not or had not become absolute, or where the sale has not or had not been confirmed, or where deed had not been delivered, the period of redemption shall be extended or the confirma-

tion of sale withheld for the period necessary for the purpose of carrying out the provisions of this section. The words 'period of redemption' wherever they occur in this section shall include any State moratorium, whether established by legislative enactment or executive proclamation, or where the period of redemption has been extended by a judicial decree. In proceedings under this section, except as otherwise provided herein, the jurisdiction and powers of the courts, the title, powers, and duties of its officers, the duties of the farmer, and the rights and liabilities of creditors, and of all persons with respect to the property of the farmer and the jurisdiction of the appellate courts, shall be the same as if a voluntary petition for adjudication had been filed and a decree of adjudication had been entered on the day when the farmer's petition, asking to be adjudged a bankrupt, was filed with the clerk of court or left with the conciliation commissioner for the purpose of forwarding same to the clerk of court."

"(o) Except upon petition made to and granted by the judge after hearing and report by the conciliation commissioner, the following proceedings shall not be instituted, or if instituted at any time prior to the filing of a petition under this section, shall not be maintained, in any court or otherwise, against the farmer or his property, at any time after the filing of the petition under this section, and prior to the confirmation or other disposition of the composition or extension proposal by the court:

"(1) Proceedings for any demand, debt, or account, including any money demand;

"(2) Proceedings for foreclosure of a mortgage on land, or for cancellation, rescission, or specific performance of an agreement for sale of land or for recovery of possession of land;

"(3) Proceedings to acquire title to land by virtue of any tax sale;

"(4) Proceedings by way of execution, attachment, or garnishment;

"(5) Proceedings to sell land under or in satisfaction of any judgment or mechanic's lien; and

"(6) Seizure, distress, sale, or other proceedings under an execution or under any lease, lien, chattel mortgage, conditional sale agreement, crop payment agreement, or mortgage.

"(p) The prohibitions of subsection (o) shall apply to all judicial or official proceedings in any court or under the direction of any official, and shall apply to all creditors, public or private, and to all of the debtor's property, wherever located. All such property shall be under the sole jurisdiction and control of the court in bankruptcy, and subject to the payment of the debtor farmer's creditors, as provided for in section 75 of this Act."

"(q) A conciliation commissioner shall upon request assist any farmer in preparing and filing a petition under this section and in all matters subsequent thereto arising under this section and farmers shall not be required to be represented by an attorney in any proceeding under this section.

"(r) For the purposes of this section, *and* section 4 (b), ~~and section 74,~~ the term 'farmer' includes not only an individual who is primarily bona fide personally engaged in producing products of the soil, but also any individual who is primarily bona fide personally engaged in dairy

farming, the production of poultry or livestock, or the production of poultry products or livestock products in their unmanufactured state, or the principal part of whose income is derived from any one or more of the foregoing operations, and includes the personal representative of a deceased farmer; and a farmer shall be deemed a resident of any county in which such operations occur."

"(s) Any farmer failing to obtain the acceptance of a majority in number and amount of all creditors whose claims are affected by a composition and/or extension proposal, or if he feels aggrieved by the composition and/or extension, may amend his petition or answer, asking to be adjudged a bankrupt. Such farmer may, at the same time, or at the time of the first hearing, petition the court that all of his property, wherever located, whether pledged, encumbered, or unencumbered, be appraised, and that his unencumbered exemptions, and unencumbered interest or equity in his exemptions, as prescribed by State law, be set aside to him, and that he be allowed to retain possession, under the supervision and control of the court, of any part or parcel or all of the remainder of his property, including his encumbered exemptions, under the terms and conditions set forth in this section. Upon such a request being made, the referee, under the jurisdiction of the court, shall designate and appoint appraisers, as provided for in this Act. Such appraisers shall appraise all of the property of the debtor, wherever located, at its then fair and reasonable market value. The appraisals shall be made in all other respects with rights of objections, exceptions, and appeals, in accordance with this Act: *Provided*, That in proceedings under this section, either party may file objections, exceptions, and take appeals within four months from the date that the referee approves the appraisal.

"(1) After the value of the debtor's property shall have been fixed by the appraisal herein provided, the referee shall issue an order setting aside to such debtor his unencumbered exemptions, and his unencumbered interest or equity in his exemptions, as prescribed by the State law, and shall further order that the possession, under the supervision and control of the court, of any part or parcel or all of the remainder of the debtor's property shall remain in the debtor, as herein provided for, subject to all existing mortgages, liens, pledges, or encumbrances. All such existing mortgages, liens, pledges, or encumbrances shall remain in full force and effect, and the property covered by such mortgages, liens, pledges, or encumbrances shall be subject to the payment of the claims of the secured creditors, as their interests may appear.

"(2) When the conditions set forth in this section have been complied with, the court shall stay all judicial or official proceedings in any court, or under the direction of any official, against the debtor or any of his property, for a period of three years. During such three years the debtor shall be permitted to retain possession of all or any part of his property, in the custody and under the supervision and control of the court, provided he pays a reasonable rental semiannually for that part of the property of which he retains possession. The first payment of such rental shall be made within one year of the date of the order staying proceedings, the amount and kind of such rental to be the usual customary rental in the community where the property is located, based upon the rental value, net income, and

earning capacity of the property. Such rental shall be paid into court, to be used, first, for payment of taxes and upkeep of the property, and the remainder to be distributed among the secured and unsecured creditors, and applied on their claims, as their interests may appear. The court, in its discretion, if it deems it necessary to protect the creditors from loss by the estate, and/or to conserve the security, may order sold any unexempt perishable property of the debtor, or any unexempt personal property not reasonably necessary for the farming operations of the debtor, such sale to be had at private or public sale, and may, in addition to the rental, require payments on the principal due and owing by the debtor to the secured or unsecured creditors, as their interests may appear, in accordance with the provisions of this Act, and may require such payments to be made quarterly, semiannually, or annually, not inconsistent with the protection of the rights of the creditors and the debtor's ability to pay, with a view to his financial rehabilitation.

"(3) At the end of three years, or prior thereto, the debtor may pay into court the amount of the appraisal of the property of which he retains possession, including the amount of encumbrances on his exemptions, up to the amount of the appraisal, less the amount paid on principal: *Provided*, That upon request of any secured or unsecured creditor, or upon request of the debtor, the court shall cause a reappraisal of the debtor's property, or in its discretion set a date for hearing, and after such hearing, fix the value of the property, in accordance with the evidence submitted, and the debtor shall then pay the value so arrived at into court, less payments made on the principal, for distribution to all secured and unsecured creditors, as their interests may appear, and thereupon the court shall, by an order, turn over full possession and title of said property, free and clear of encumbrances to the debtor: *Provided*, That upon request in writing by any secured creditor or creditors, the court shall order the property upon which such secured creditors have a lien to be sold at public auction. The debtor shall have ninety days to redeem any property sold at such sale, by paying the amount for which any such property was sold, together with 5 per centum per annum interest, into court, and he may apply for his discharge, as provided for by this Act. If, however, the debtor at any time fails to comply with the provisions of this section, or with any orders of the court made pursuant to this section, or is unable to refinance himself within three years, the court may order the appointment of a trustee, and order the property sold or otherwise disposed of as provided for in this Act.

"(4) The conciliation commissioner, appointed under subsection (a) of section 75 of this Act, as amended, shall continue to act, and act as referee, when the farmer debtor amends his petition or answer, asking to be adjudged a bankrupt under the provisions of subsection (s) of section 75 of this Act, and continue so to act until the case has been finally disposed of. The conciliation commissioner, as such referee, shall receive such an additional fee for his services as may be allowed by the court, not to exceed $35 in any case, to be paid out of the bankrupt's estate. No additional fees or costs of administration or supervision of any kind shall be charged to the farmer debtor when or after he amends his petition or answer, asking to be adjudged a bankrupt, under subsection (s) of section 75 of

this Act, but all such additional filing fees or costs of administration or supervision shall be charged against the bankrupt's estate. Conciliation commissioners and referees appointed under section 75 of this Act shall be entitled to transmit in the mails, free of postage, under cover of a penalty envelope, all matters which relate exclusively to the business of the courts, including notices to creditors. If, at the time that the farmer debtor amends his petition or answer, asking to be adjudged a bankrupt, a receiver is in charge of any of his property, such receiver shall be divested of possession, and the property returned to the possession of such farmer, under the provisions of this Act. The provisions of this Act shall be held to apply also to partnerships, common, entirety, joint, community ownerships, or to farming corporations where at least 75 per centum of the stock is owned by actual farmers, and any such parties may join in one petition.

~~"(5) This Act shall be held to apply to all existing cases now pending in any Federal court, under this Act as well as to future cases; and all cases that have been dismissed by any conciliation commissioner, referee, or court because of the Supreme Court decision holding the former subsection(s) unconstitutional, shall be promptly reinstated, without any additional filing fees or charges.~~

"(5) *This Act shall be held to apply to all existing cases now pending in any Federal Court, under this Section, as well as to future cases. All cases under this Section that have been dismissed by any conciliation commissioner, referee, or Federal Court because such Court erroneously assumed or held that subsection(s) of section 75 of this Act was unconstitutional, shall be promptly reinstated, without any additional filing fees or charges.* Any farm debtor who has filed under the General Bankruptcy Act may take advantage of this section upon written request to the court; and a previous discharge of the debtor under any other section of this Act shall not be grounds for denying him the benefits of this section.

"(6) This Act is hereby declared to be an emergency measure and if in the judgment of the court such emergency ceases to exist in its locality, then the court, in its discretion, may shorten the stay of proceedings herein provided for and proceeded to liquidate the estate.

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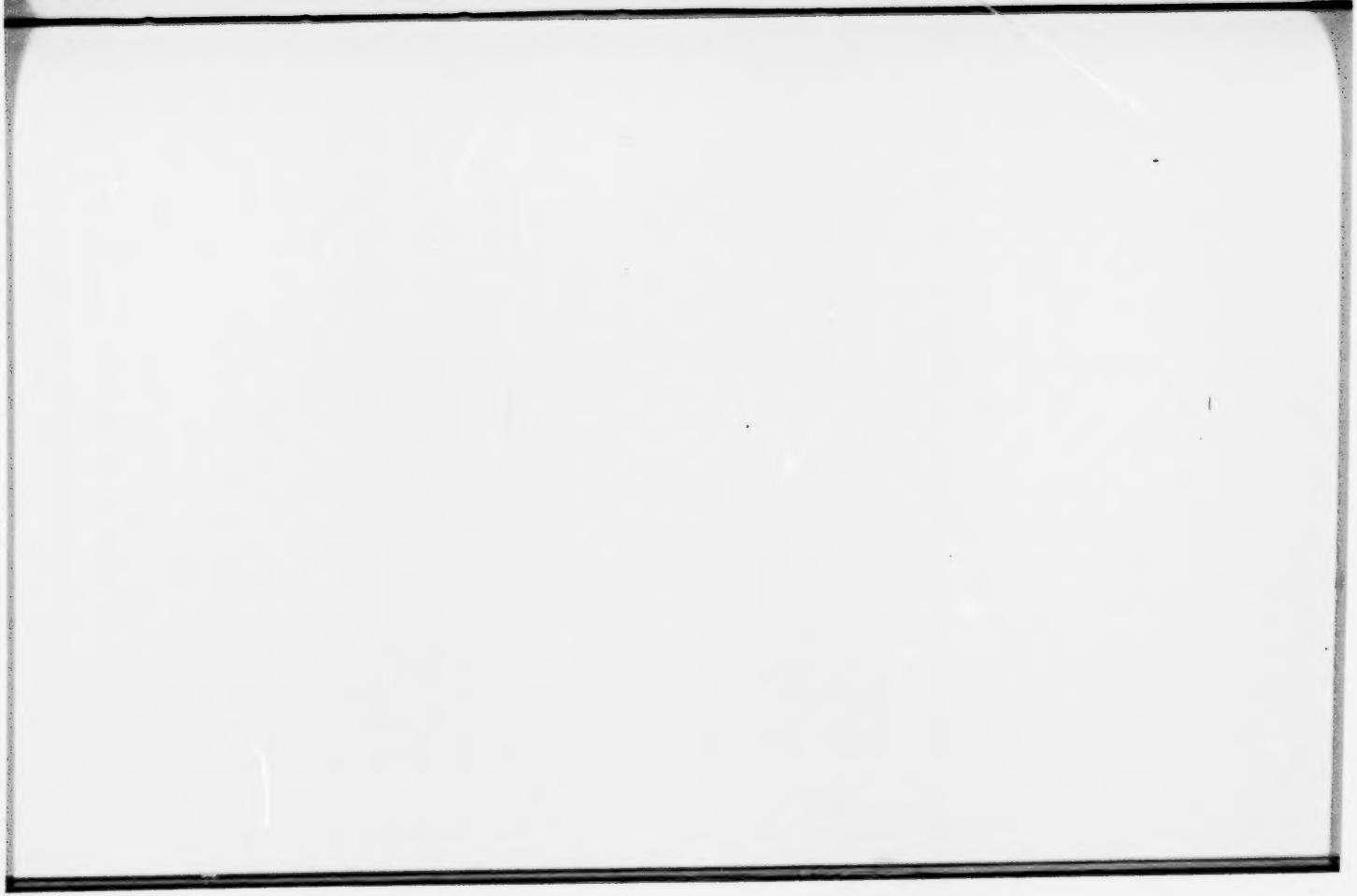

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1943.

No. 808.

JACOB REICHERT,

Petitioner,

vs.

THE FEDERAL LAND BANK OF SAINT PAUL,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

RESPONDENT'S BRIEF

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RESPONDENT'S BRIEF

BASIS OF JURISDICTION

This Court has jurisdiction under Section 240 of the Judicial Code, as amended by the Act of February 13, 1925 (28 U. S. C. 347).

In stating the facts and the issues the petitioner overlooks and omits certain facts which materially affect the questions submitted. While respondent does not concede that the issues are as stated by petitioner, and does not adopt those issues, for clarity the respondent supplies certain additional facts and makes the following restatement of each issue contained in the petitioner's petition and brief.

RESTATEMENT OF ISSUES CONTAINED IN PETITIONER'S BRIEF

1. Where a farmer-debtor was adjudged a bankrupt under Section 75(s) of the Bankruptcy Act (11 U. S. C., Sec. 203(s)), on May 31, 1941, is ordered to pay rental for the year 1941 and succeeding years upon two sections of land, by the terms of a rental and stay order entered August 25, 1941, from which no appeal was taken, and pays into Court as part of such rental $1,456.27 on October 11, 1941, and deposits the initial or original appraised value of said land, $4,560.00, in November, 1941, but upon request of the respondent, a secured creditor, a hearing to fix the value of said land, pursuant to the provisions of said Section 75(s)(3), (11 U. S. C., Sec. 203(s)(3)) is held which finally results in the value thereof being fixed at $10,400.00 by an order of the District Court dated September 1, 1942, at which time taxes in the amount of $1,605.83 are due and unpaid on said land, is the bankrupt entitled to credit said $1,456.27 rental deposit upon the amount of $10,400.00 required to redeem said land and obtain an order turning over to him the land free and clear of encumbrances.

2. Where, for the purpose of obtaining an order of the District Court turning said land over to him, the farmer-bankrupt in November, 1941, deposited in Court the amount of the original appraised value of $4,560.00, which value was on September 1, 1942, fixed at $10,400.00 by order of the District Court in proceedings duly had under the provisions of Section 75(s)(3) of the Bankruptcy Act (11 U. S. C., Sec. 203(s)(3)), the farmer-bankrupt retaining possession of said land during all of said time, is his liability for rental thereof under the stay and rental order entered August 25, 1941, terminated as of the date of making said deposit.

3. Where the stay and rental order entered on August

25, 1941 (R. 3 to 5), required among other items the payment of the proceeds of a fixed share of the crops grown on said land in the year 1941, as rental, no appeal therefrom having been taken, and the farmer-bankrupt has deposited a part of said rental, may he make redemption of said land and obtain from the District Court an order turning over to him full possession and title of said land, free and clear of encumbrances, on September 23, 1942, while in default of full compliance with the stay and rental order.

It is respondent's contention, based upon petitioner's Assignments of Errors in the Circuit Court, and the statement of issues by that Court, that the only issue before this Court is that set forth in paragraph numbered 1 of respondent's restatement above.

The Circuit Court of Appeals in stating the issues before it said (R. 35):

> "The debtor contends that the Court erred in two particulars: (1) In holding, in a case in which the debtor redeems the mortgaged land, that the rentals remaining after payment of taxes and upkeep should be distributed to the creditors as their interest may appear—in this case to the appellee as holder of the first lien; and (2) In holding that the crop mortgage, given before adjudication of bankruptcy, was a lien on the debtor's share of the crop remaining after payment of rentals fixed by the Court, 25% of the value of which crop must be paid to the mortgagee in addition to the value of the farm as fixed by the Court."

The second point related to a crop mortgage held by respondent and is not involved in this proceeding.

RESPONDENT'S STATEMENT OF ADDITIONAL FACTS

Petitioner was adjudged a bankrupt under Section 75(s) of the Bankruptcy Act (11 U. S. C., Sec. 203(s)), May 31, 1941 (R. 2).

As stated in petitioner's brief, a stay and rental order was duly entered on August 25, 1941 (R. 3 to 5) specifically requiring rental for the year 1941 and subsequent years. No petition to review said order was ever filed, and no appeal from said order was taken. The farmer-bankrupt partially complied with said order to the extent of depositing with the Court, for distribution, the proceeds of one-fourth of his 1941 crops (R. 15). The statements of points relied upon by the petitioner in his appeal to the United States Circuit Court of Appeals for the Eighth Circuit (R. 26, 27) contain no objection to or attack upon said stay and rental order.

There is no finding by the District Court that this estate is insolvent, nor is there any basis in the record for such a finding. The Circuit Court of Appeals stated (R. 37) that there are no unsecured creditors. The crop proceeds appear to be very large (R. 15). All of the property of the petitioner is still under the supervision and control of the Court.

The petitioner deposited $1,456.27 (R. 15), part of the rental required, which deposit is insufficient to pay the real estate taxes on said land of $1,605.83 (R. 16).

The petitioner's deposit of the fixed value of said land in order to make redemption thereof and obtain an order turning over to him said land free and clear of encumbrances was made in September, 1942 (R. 16), and in making the same he took credit for the full rental deposit of $1,456.27, only depositing $8,943.73 over and above said rental deposit (R. 16, 34).

REASONS WHY WRIT OF CERTIORARI SHOULD BE DENIED

1.

The decision of the Circuit Court of Appeals herein does not conflict with the decision of any other Circuit Court of Appeals on the same matter; and it does not conflict with any applicable decision of the Supreme Court of the United States.

2.

Distribution and application of rentals paid into Court is clearly set forth in said Section 75(s)(2) of the Bankruptcy Act (11 U. S. C., Sec. 203(s)(2)).

3.

The record does not sustain the assertion by the petitioner that the estate herein involved is insolvent.

4.

No review of or appeal from the stay and rental order having been taken by petitioner and no error assigned with respect thereto in petitioner's appeal to the Circuit Court of Appeals, the terms and conditions of said order are not now properly reviewable by this Court.

ARGUMENT

The Supreme Court of the United States has, in Rule 38(5)(b) indicated the character of reasons to be considered for the exercise of the Court's sound judicial discretion in granting a review on a Writ of Certiorari in regard to a decision of a Circuit Court of Appeals.

Petitioner herein does not contend that the decision of which he seeks review involves a question of local law, or that the Circuit Court of Appeals has departed from the accepted and usual course of judicial proceedings or sanctioned such a departure. There is no basis in the record for those reasons to arise in this case.

1.

The Decision of the Circuit Court of Appeals Does Not Conflict With the Decision of Any Other Circuit Court of Appeals on the Same Matter; and It Does Not Conflict With Any Applicable Decision of the Supreme Court of the United States.

No other United States Circuit Court of Appeals has decided the matter herein involved to date. Petitioner contends that there are conflicting opinions, resulting in confusion and uncertainty, in the federal courts on the subject of application of rental funds, citing five cases on page 9 of his brief. The first four cases cited, *In re Dewey,* District Court, Missouri, not reported; *In re Ezell,* District Court, Missouri, 1942, 45 F. Supp. 164; *In re Rider,* District Court, Iowa, 1941, 40 F. Supp. 882; and *In re Thompson,* District Court, Missouri, 1942, 48 F. Supp. 557, are all decisions of United States District Courts within the Eighth Circuit. The decision of *In re Rider* is in accord with the instant case. *In re Rider* and *In re Ezell* were not appealed from, but the later

cases of *In re Dewey* and *In re Thompson* were reversed by the United States Circuit Court of Appeals for the Eighth Circuit, on the question of applications of rental, in the reported cases of *Wilson vs. Dewey*, 133 F. (2d) 962, and *Farmers Bank vs. Thompson*, 139 F. (2d) 408 (Petition for Certiorari filed February 7, 1944, number 673 this term). The conflict of decisions apparently relied upon by petitioner, therefore, is between certain United States District Courts and the United States Circuit Court of Appeals in the same Circuit. The above decisions by the Circuit Court of Appeals of the Eighth Circuit settled the law in the Eighth Circuit. In the fifth case cited by petitioner, *Federal Land Bank of Louisville vs. Roney*, C. C. A. 7, 1943, 139 F. (2d) 175, the question of application of rental funds was eliminated by dismissal of the debtor's petition for redemption, and hence not decided. Respondent therefore submits that there exists no conflict of decisions in the lower Courts on the questions herein submitted.

Rather than a conflict of decisions, later decisions of the District Courts within the Eighth Circuit are in accord with principles laid down by the Circuit Court of Appeals for that Circuit. *In re Breuer,* 52 F. Supp. 982; *In re Wenstrom,* 52 F. Supp. 990.

2.

Distribution and Application of Rentals Paid Into Court Is Clearly Set Forth in Section 75(s)(2) of the Bankruptcy Act (11 U. S. C., Sec. 203(s)(2)).

The clear unambiguous language of Section 75(s)(2) of the Bankruptcy Act (11 U. S. C. 203(s)(2)) sets forth the distribution and application of rentals provided for therein shall be:

> "Such rental shall be paid into Court, to be used, first, for the payment of taxes and upkeep of the property,

> and the remainder to be distributed among the secured and unsecured creditors, and applied on their claims, as their interests may appear."

The claims of the creditors are the respective amounts filed, proved and allowed in the proceedings under Section 75 of the Bankruptcy Act (11 U. S. C., Sec. 75). Claims should not be confused with the amount of the appraisal of the farmer-bankrupt's property, or the value thereof fixed by the Court, as the case may be, which is the amount at which the farmer-bankrupt may redeem his property from the lien of his creditor and obtain the so-called turnover order. Very often, as in the case at bar, the amount of the appraisal or fixed value of the farmer-bankrupt's property upon which the secured creditors have liens, is far less than the amount of their respective claims (R. 14, 16).

It is submitted that Section 75(s)(2) clearly provides that payments which may be ordered by the Court in addition to the rental shall be payments on principal, and clearly provides that rental above taxes and upkeep shall be applied on claims. The language is plain, and the distinction is obvious.

There is no uncertainty in the law or the decisions with respect to the distribution of the rental remaining after payment of taxes and upkeep of the property. The Circuit Court of Appeals for the Eighth Circuit in *Wilson vs. Dewey*, 133 F. (2d) 962, in approving the decision *In re Rider*, 40 F. Supp. 882, stated:

> "But we need to look no further than the Act itself to determine how distribution of these sums in the hands of the receiver should be made. Subsection (s)(2) says that such rental shall be paid into Court to be used for payment of taxes and upkeep of the property, and the remainder to be distributed among the secured and unsecured creditors and applied on their claims as their interests may appear."

The question in *Wilson vs. Dewey, supra,* was whether, after the farmer-bankrupt had made redemption of his land at the appraised value thereof, the balance of the rentals over and above taxes and upkeep amounting to $2,389.02 should be turned over to the holder of the mortgage to be applied on its claim or refunded to the farmer-bankrupt. The Court stated on page 965:

> "The debtor occupied the premises and, hence, received full value for the rental paid. If this $2,389.02 is refunded to him, however, he will not have paid the rental required for the occupancy and use of the premises during the three years in question."

This Court has held in *Louisville Joint Stock Land Bank vs. Radford,* 295 U. S. 555, and in *Wright vs. Vinton Branch of Mountain Trust Bank,* 300 U. S. 440, that the requirement of the payment of rental was an element necessary to preserve the constitutionality of Section 75 of the Bankruptcy Act. It is apparent that the Circuit Court of Appeals herein by the quotation, *supra,* realized returning rental over and above taxes and upkeep to the bankrupt, which is essentially the same result as allowing the same to be applied as a credit upon the fixed value for redemption, would in effect remove the requirement for the payment of rental and thus remove one of the requirements necessary for the constitutionality of the Act.

Respondent submits there is no uncertainty in the law or in the decisions with respect to the distribution and application of rental remaining after payment of taxes and upkeep of the property.

The facts in the instant case allow no room to question the correctness of the decision of the Circuit Court of Appeals. The District Court found that rentals of $1,456.27 were deposited in Court (R. 15), and it is these rentals that the petitioner seeks to have applied upon the fixed value of

the land for redemption. But that Court also found that the taxes outstanding on the land amounted to $1,005.85 (R. 16). Petitioner in his brief (p. 2) admits that rental must first be applied to taxes, yet the rentals which he seeks to have applied on the fixed value for redemption in this case are insufficient to pay the outstanding taxes. There is no remainder for any distribution.

The holding of the Circuit Court of Appeals is in harmony with principles considered by this Court in *Wright vs. Vinton Branch of Mountain Trust Bank*, 300 U. S. 440, 465-468.

3.

The Record Does Not Sustain the Assertion by the Petitioner That the Estate Herein Involved Is Insolvent.

Petitioner's contention that the Court erred in its application of rental is predicated on his assertion that the bankrupt's estate is insolvent. There is no basis in the record for this assertion. There is no finding by the Courts below that the estate is insolvent. The findings of the District Court that respondent's claims aggregated $14,706.12, while the value of the land securing them was fixed at $10,500.00 (R. 8, 14), are not a finding that the estate is insolvent. The value of other assets of the estate was not at issue herein. All of petitioner's property is still under the supervision and control of the Court. The Circuit Court of Appeals stated (R. 22) that there appear to be no unsecured creditors. The value of one-fourth of the 1941 crops (R. 15) reveals a very large income. It may well be that there are sufficient assets over and above the land to liquidate petitioner's debts.

4.

No Review of or Appeal from the Stay and Rental Order Having Been Taken by Petitioner and No Error Assigned With Respect Thereto in Petitioner's Appeal to the Circuit Court of Appeals, the Terms and Conditions of Said Order Are Not Now Properly Reviewable by This Court.

Petitioner objects to the terms of the stay and rental order (R. 3 to 5) in several respects, particularly where they require rental payment from the proceeds of the 1941 crop. Any objection to the terms of the stay and rental order should have been raised by petitioner by way of timely petition for review or appeal. No review was sought and no appeal perfected from the stay and rental order. No error in regard to it was assigned in the record before the Circuit Court of Appeals below (R. 26, 27). The Circuit Court of Appeals said (R. 36):

> "No complaint is made of the amount of rental fixed in the order of August 25, 1941. There can be no doubt that that part of the order requiring the payment of rental into Court is correct and in accordance with the provisions of the statute."

The quoted language is supported by the statute and case law. Rental orders, as provided by Section 75(s)(2) (11 U. S. C. 203(s)(2)), are to fix the rental at the "usual customary rental in the community where the property is located * * *." That the first payment of rental may be required to be paid before the end of a year from the date of the order appears decided in *Wright vs. Vinton Branch of the Mountain Trust Bank*, 300 U. S. 440, 467:

> "The clause providing that 'the first payment of such rental shall be made within one year' is obviously capable of either of two constructions. One, that the mortgagor may not be required by the Court to pay before the close of the year. The other, that the Court may not

postpone the payment beyond one year. In view of the requirement of semi-annual rental, the latter seems to us more reasonable. We intimate no opinion as to the validity of this provision under the first construction. As here construed, the clause cannot be deemed arbitrary or unreasonable."

The terms of the stay and rental order are in accordance with the statute, and that order is not now properly subject to review.

Respondent submits that there appears no substantial reason or necessity for granting a Writ of Certiorari to the Circuit Court of Appeals for the Eighth Circuit, and prays the petition be denied.

Respectfully submitted,

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(9)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 808

JACOB REICHERT,

Petitioner,

vs.

THE FEDERAL LAND BANK OF ST. PAUL.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

REPLY BRIEF OF PETITIONER.

ELMER MCCLAIN,
WILLIAM LEMKE,
Counsel for Petitioner.

SUPREME COURT OF THE UNITED STATES

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Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

REPLY BRIEF OF PETITIONER TO RESPONDENT'S BRIEF.

This reply brief will follow the order of the Respondent's brief using the paging of that brief as headings.

All emphasis in this brief is supplied.

Respondent's Reply Brief, Pages 2 and 3.

Section 3, starting at foot of page 2.

The respondent's statement of facts is erroneous at the top of page 2 to the effect that the rental order (R. 3):

> "required among other items the payment of the proceeds of a fixed share of the crops grown on the land in the year 1941, as rental."

The rental order does not so read. On the contrary it reads:

> "as rental **for the year 1941:**" * * * One-fourth of all the grain raised and harvested, including forage crops."

That is, for the **whole year** one-fourth of the crops was the rent. Redemption was exercised at the expiration of but one-fifth of the year. Rent is due only when it is earned. It is obvious that the rental order did not require the whole year's crop share for one-fifth of the year. Nor did it purport to require rent for any portion of the crop year preceding the entry of the order.

Respondent's Brief, Page 4.

Second Paragraph.

The petitioner does not question the validity of the rental order.

The farmer-debtor wholly complied with every phase of the rental order. That order (R. 3) required for the **entire year.**

1. One-fourth of the crops and forage.
2. One-fourth of all AAA payments made to the farmer-debtor.
3. $200 for use of buildings and pastures.

The farmer-debtor paid one-fourth of the crop proceeds of the **entire year 1940** prior to November 8, 1941. R. 5, fol. 5. At that time no AAA payment had been made to him for 1941 and none was due as rental; the $200 for the use for the **entire year** of the buildings and pastures was not then earned, as but one-fifth of the year had expired. The $1456.27, having been the one-fourth share for the entire

preceding crop year was more than was due for occupancy during one-fifth of the first year of the rental order, that is between April 28, 1941 (entry of the rental order R. 3) and November 8, 1941 (first mention that the right of redemption had been exercised. R. 5, fol. 5.)

Respondent's Brief, Page 4.

Third Paragraph.

The record conclusively shows, and the appellate court expressly found, that the estate is insolvent.

1. The appraisal states that the appraisers were

> "appointed to estimate and appraise the real and personal property aforesaid, have attended to the duties assigned to us, and after a strict examination and careful inquiry, we do estimate and appraise the same as follows:"

Then follows the appraisal of the real estate, no personalty being included. The report specifically says it was made at the farm. R. 3, fol. 3.

No rental is fixed for chattels although Section 75(s)(2) requires it if chattels are part of the estate.

> "The debtor shall be permitted to retain possession of all or any part of his property * * * provided he pays a reasonable rent * * * for that part of the property of which he retains possession."

Clearly there was no chattel property in the estate.

2. The appellate court said

> "The appellee's claim allowed on its first mortgages amounted to $14,707.12. The value of the land fixed by the court was only $10,400." R. 37 top of page.

This is a finding that the estate is insolvent.

Respondent's Brief, Page 6.

Section Numbered 1.

Respondent's statement that the appellate court's decision in this case is not conflicting attempts to narrow the issue on this point to farmer-debtor cases. As shown in the petitioner's brief at pages 24 to 26 the appellate court's decision conflicts not only with its own previous decisions but with a decision of this Court. Not only so, but it also conflicts with the farmer-debtor statute, Section 75(k) (n) and (s) (2) and (3), as shown in petitioner's brief at pages 18 to 24.

As to the district court decisions in the Eighth Circuit which are discussed in the petitioner's brief at pages 26 to 33, we think that they not only followed the Eighth Appellate's own previous holdings but were in accord with the farmer-debtor statute.

Respondent's Brief, Pages 7 to 10.

Section Numbered 2.

In this section of its brief the respondent departs from the statute and rests its case on what it would prefer the statute to contain.

It refers to the statute's words "such rental" in Section 75(s)(2) as if they referred to the $1456.27 paid into court. They refer to the amount and kind of reasonable rental in accordance with the usual customary rental of the community in the immediately preceding sentence of the same Section 75(s)(2). By nature and by custom rental for one-fifth of the year's occupancy cannot reasonably be a share of the whole year's crops.

In the second paragraph on page 8 the respondent rests its argument on the ground that under the guise of the authority to order additional payments to be made, over

and above rental, as provided in the last sentence of Section 75(s)(2), the court may take more than it can take under its rental order and present it to the respondent without applying it on the valuation, contrary to Section 75(s)(3).

Such wishful thinking must be based upon the specific order which was never sought nor entered in this case.

As to *Wilson* v. *Dewey*, 133 F. (2d) 962), it is sufficient to point out, as the appellate court itself did in the first full paragraph in the second column at page 964, that the $16,500 appraised value of that farm was "more than ample to pay in full principal and accrued interest" on the first mortgage. This is a fact which distinguishes *Wilson* v. *Dewey* from this *Reichert* case in which, as has been shown, the same appellate court showed that respondent's first mortgages were $14,707 on land worth only $10,400.

In passing, it may be noted, that the respondent would have the farmer-debtor not only to lose the value of the use of his money laying idly in court *while the respondent contested* the valuation, and at the *same time pay rent* for the land he was redeeming.

This court has never held, and the *statute nowhere* provides, that rental may be charged either *before* the rental order is entered or *after* the right of redemption is exercised.

Respondent's Brief, Page 10.

Section Numbered 3.

That the farmer-debtor's estates is insolvent is shown not only by the record but was so found by the appellate court. It is so badly insolvent that the first mortgages alone are over $4,000 more than the value of the land. See petitioner's brief at page 34 and the opinion of the appellate court at R. 37.

Respondent's Brief, Page 11.

Section Numbered 4.

Again the petitioner makes it clear that he does not "Object to the stay and rental order." He more than complied with that order when he paid the crop share for the whole year whereas he occupied the farm but one-fifth of the year beginning with the entry of the rental order. R. 3, fol. 4. R. 3, fol. 3, first paragraph.

It is the application of the rental and of the statute that is questioned. The statute does not countenance charging a whole year of crop rental on crops produced by a whole year of farm operations, four-fifths of which preceded the entry of the rental order. Nor does *Wright* v. *Vinton*, 300 U. S. 440 support such a claim. The time when a rent payment is ordered to be made, whether within, or at the end of the first year, is not in issue.

April 18, 1944.

Respectfully submitted,

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